

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**COMMANDER KENNETH J.
WHITWELL,**

Plaintiff,

v.

REV. EDWARD J. SMITH,

Defendant.

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C.A.No. 05-796-SLR

EXHIBIT LIST

THE NEUBERGER FIRM, P.A.
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Attorneys for Plaintiff

- (6) A list of pre-marked exhibits, which plaintiff intends to offer at the trial with a specification of the Federal Rule of Evidence relied upon by the plaintiff.

Schedule (6)(1)
Plaintiff's "No Objection" Exhibits

Plaintiff's Exhibit No.	Description	Fed.R.Evid.
PX1 (a-g)	Seven pictures of plaintiff and his family in the relevant time frame socializing with defendant Smith at family functions and at home.	402
PX 2	Photocopy of picture of defendant Smith from the 1983 Archmere Academy School yearbook, 2 pages	402
PX 3	Photocopy of picture of defendant Smith and plaintiff from the 1984 Archmere Academy School yearbook, 5 pages	402
PX4	Redacted May 22, 2002 letter from the Headmaster of Archmere Academy stating that defendant Smith worked at Archmere in the years 1982-1984, 1 page	402; 803(6) - business record exception; 901(b)(1) authenticated by a witness with knowledge
PX 5	List of four health care providers, 1 page	402 - damages

PX6	<p>Office notes of treating physician Capt. William A. McDonald, USN, presently unavailable to testify because he is deployed with a Marine Corps Air Wing that has just returned from the war zone in Camp Taqaddum, Iraq and is presently going through mandatory “out processing” at Camp Pendleton, California. 4 pages.</p>	<p>402 - damages; 901(b)(1) - authenticated by a witness with knowledge; 803(4) - statements reasonably pertinent to diagnosis or treatment, statements for purposes of medical diagnosis or treatment, or the inception of the condition; 803(5) - recorded recollection of a witness who is unavailable since he is at war in Iraq; 807 - declarant unavailable but statement made under penalty of perjury and the facts are material to damages, it is more probative than other evidence since there is no other testimony of any other treating physician which can be obtained; and the general purposes of the rules and the interests of justice will be served by the admission of the statements of a Naval officer who is in a war zone and on matters for which he has no interest in being untruthful; 703 - facts on which expert testimony by Dr. Tavani is based and which she could recount but instead this is the best evidence of those facts recounted by this unavailable witness and should not be filtered through another witness.</p>
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PX7	Resume of Carol A. Tavani, M.D., 31 pages	402 - expert's qualifications; 901(b)(1) - this resume is being offered by the author, a person with personal knowledge, who can be cross examined. It will expedite the trial to simply admit the resume instead of wasting time reciting all 31 pages of it.
PX 8	Letter dated January 16, 2006 from defendant Smith's attorney, Thomas A. Bergstrom, stating that Smith received notice of the lawsuit against him, 1 page	402; 801(d)(2)(C)&(D) - admission by a party opponent's agent.
PX 9	4 pages of United States Navy salary scales for the ranks of Commander (O-5), Captain (O-6), and Admiral (O-7)	402 - damages.

Schedule (6)(2)**Plaintiff's Demonstrative Evidence**

Plaintiff's Exhibit No.	Description
A	Ken's symptoms and defense mechanisms
B	Ken's history and symptoms from Dr. MacDonald
C	Ken's symptoms, diagnosis and prognosis from Dr. Tavani
D	Categories of damages
E	Categories of punitive damages
F	Blow-up of any admitted exhibit
G	Any other courtboards.

(6) Whitwell Draft exhibits draft 7